

ORIGINAL

DOCKET FILE COPY ORIGINAL
 Before the
 FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

RECEIVED

94-107

SEP 19 1994

In re Petition of

THE LOUISIANA PUBLIC SERVICE COMMISSION

To Retain Existing Jurisdiction Over Commercial
 Mobile Radio Services Offered Within Louisiana

PR File No. 94-SP5

To: The Commission

COMMENTS OF CENTURY CELLUNET, INC.

Century Cellunet, Inc. ("Century") hereby submits its comments on the petition of the Louisiana Public Service Commission ("Louisiana") to continue exercising authority over the rates charged by Commercial Mobile Radio Service ("CMRS") providers offering these services within the state of Louisiana. As detailed below, Louisiana's petition must be denied. Initially, Louisiana has not identified any existing CMRS rate regulations for which continued authority could be granted. Further, even if such regulations existed, Louisiana has failed to make the showing required by statute to justify the grant of such authority.

I. LOUISIANA HAS NOT IDENTIFIED ANY EXISTING RATE REGULATIONS THAT WOULD BE ELIGIBLE FOR CONTINUED AUTHORITY

Section 332(c)(3)(A) of the Communications Act clearly provides that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service. . . ." ¹ Under Section

¹ 47 U.S.C. § 332(c)(3)(A). Accordingly, Louisiana's current requirement that
 (continued...)

- 2 -

332(c)(3)(B), however, a state that has CMRS rate regulation in effect as of June 1, 1993 may petition the Commission to extend that authority so long as certain statutory requirements are met.² In its petition, Louisiana has wholly failed to identify any rate regulations that were in existence as of June 1, 1993.

The FCC's Order establishing procedures for state petitions to continue CMRS rate regulation specifically provides that the petition must include a "detailed description" of the "specific" existing rules sought to be continued.³ Yet, Louisiana has neither identified nor described any existing rate regulations. Instead, it admits that it has long pursued a policy of forbearance.⁴ Indeed, as the petition underscores, any past state actions by Louisiana pertaining in any way to mobile radio rates have occurred only rarely. In those limited cases, the actions were taken not pursuant to specific regulations, but rather pursuant to generic oversight authority. Significantly, the only state commission order Louisiana

¹(...continued)

CMRS providers must register with the state prior to providing service is only permissible if this requirement does not act as a bar or limitation to entry.

² 47 U.S.C. § 332(c)(3)(B) (emphasis added).

³ Implementation of Sections 3(n) and 332 of the Communications Act: Regulatory Treatment of Mobile Services, Second Report and Order, 9 FCC Rcd 1411, 1505 (1994) [hereinafter "Order"].

⁴ Louisiana Petition at 34-35. Exhibits 1, 2 and 3 attached also state that the LPSC does not regulate rates. In Exhibit 1, Commissioner Schegmann's office informed the customer that "the LPSC does not have jurisdiction in any cellular pan matter pertaining to their rates". In Exhibit 2, Eddie Gallegos, with the Commission's Utility Staff, informed the customer that the LPSC "does not actually regulate rates". In Exhibit 3, the Commission informed the customer that "Cellular companies only have to have their rates filed with the PSC, not approved".⁴

- 3 -

identifies, which actively and specifically regulated CMRS rates, was the PriCellular case.⁵ However, this decision was adopted on July 7, 1993 -- after the June 1, 1993 cut-off date imposed by the statute. The LPSC Petition also describes the ten citations to CMRS providers for operating in Louisiana without authorization from the LPSC between 1983 and 1993.⁶ Each of these citations pertain to paging companies not cellular as stated in the petition. Pursuant to Section 332(c)(3)(a) of the Communications Act "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service or any private mobile service...." This section does not provide for states to petition to continue to regulate CMRS entry; therefore, this information is not relevant. The LPSC Petition addresses the need to evaluate "Tying Arrangements".⁷ Bundling of cellular service and equipment has already been addressed by the FCC. The LPSC uses this Petition as a means to continue to regulate cellular interconnection rates.⁸ The LPSC would continue to have authority to regulate the interconnection rates of the landline telephone company to wireless providers without petitioning the FCC for continued regulation.

⁵ LPSC Order No. U-20349 (July 7, 1993). The LPSC dismissed their order on September 22, 1993 when the involved parties reached an Agreement. (Exhibit 4)

⁶ LPSC Petition Page 9

⁷ LPSC Petition Page 11

⁸ LPSE Petition Page 17

- 4 -

The LPSC Petition references the Governors Task Force, established as part of a state-wide planning process for the efficient and economic deployment of telecommunications service throughout Louisiana. The Petition states that the "Wireless Committee specifically recognized that regulation of the CMRS marketplace is needed until the market becomes more fully competitive".⁹ Attached as Exhibit 7 is a letter from the Chairman of the Wireless Committee clarifying their positions. The Committee believed that preemption of state authority over CMRS would take place. It was the committees recommendation that the PCS focus on insuring rapid deployment and development of communications infrastructure and the protection of Universal service while the state Legislature acts as the catalyst for change.

Accordingly, in its petition, Louisiana is essentially asking for permission to maintain flexibility to regulate CMRS rates when and how it feels such regulation is needed. Such generic state regulatory authority over CMRS rates is not contemplated by the statute. The statute and the legislative history are unambiguous in their desire to preempt state and local entry and rate regulation as well as in their directive for specific FCC approval of any state rate regulation that might be allowed to continue. If, upon the conclusion of its current proceeding on CMRS rates, Louisiana has identified specific rate regulations it believes are necessary to ensure reasonable and nondiscriminatory rates, it should at that time submit a petition for authority to implement those regulations. The instant petition to continue rate regulation is not the appropriate vehicle.

⁹ LPSC Petition Pages 41-43

- 5 -

**II. EVEN IF IT HAD IDENTIFIED EXISTING CMRS RATE REGULATION,
LOUISIANA HAS NOT MADE THE REQUISITE SHOWING TO PERMIT
AN AWARD OF CONTINUED AUTHORITY**

Although both the statute and the legislative history express a clear intent to allow the CMRS market to function without state or local intervention, Section 332(c)(3)(A) of the Communications Act permits the FCC to grant a state's petition to continue existing CMRS rate regulation in certain limited situations. Specifically, the Commission may grant such a petition only "if such State demonstrates that--

(i) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or

(ii) such market conditions exist and such service is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within such State."¹⁰

In its Order adopting procedures for these petitions, the FCC emphasized that "[a]ny state filing a petition pursuant to Section 332(c)(3) shall have the burden of proof that the state has met the statutory basis for the establishment or continuation of state regulation of rates."¹¹ The Order also sets forth examples of the types of evidence and information that would be pertinent to the FCC's examination of market conditions and consumer protection:

- (1) The number of CMRS providers in the state, the types of services offered by these providers, and the period of time during which these providers have offered service in the state.

¹⁰ 47 U.S.C. § 332(c)(3)(A) (emphasis added).

¹¹ Order at 1504 (emphasis added).

- 6 -

- (2) The number of customers of each such provider, and trends in each provider's customer base during the most recent annual period (or other reasonable period if annual data is not available), and annual revenues and rates of return for each such provider.
- (3) Rate information for each CMRS provider, including trends in each provider's rates during the most recent annual period (or other reasonable period if annual data is not available).
- (4) An assessment of the extent to which services offered by the CMRS providers that the state proposes to regulate are substitutable for services offered by other carriers in the state.
- (5) Opportunities for new entrants that could offer competing services, and an analysis of existing barriers to such entry.
- (6) Specific allegations of fact (supported by an affidavit of a person or persons with personal knowledge) regarding anti-competitive or discriminatory practices or behavior on the part of CMRS providers in the state.
- (7) Evidence, information, and analysis demonstrating with particularity instances of systematic unjust and unreasonable rates, or rates that are unjustly or unreasonably discriminatory, imposed upon CMRS subscribers. Such evidence should include an examination of the relationship between rates and costs. We will consider especially probative the demonstration of a pattern of such rates, if it is also demonstrated that there is a basis for concluding that such a pattern signifies the inability of the CMRS marketplace in the state to produce reasonable rates through competitive forces.
- (8) Information regarding customer satisfaction or dissatisfaction with services offered by CMRS providers, including statistics and other information regarding complaints filed with the state regulatory commission.¹²

Even if the petition had identified existing CMRS rate regulation, Louisiana fails to make the statutorily required showing for authority to continue such regulation. As an initial matter, Louisiana provides little evidence of the kind suggested by the FCC as

¹² Id. at 1504-05.

- 7 -

pertinent to such a showing.¹³ It provides no evidence as to a pattern of unjust or unreasonable pricing or that an analysis of CMRS rates in the state demonstrates a lack of competition. In its petition, Louisiana even admits that it lacks evidence as to the state of competition in the Louisiana CMRS market and the likelihood of unreasonable pricing, stating that it hopes to collect such information in its proceeding regarding cellular service rates.¹⁴

Louisiana's sole reliance on statements by the FCC and others that the cellular market generally is not fully competitive is not sufficient to meet the statutory showing. The FCC's conclusions cited in the petition find only that the cellular market may not be fully competitive. They do not declare that the market is not competitive. Particularly given the emergence and growth of alternatives to cellular, such as SMR, ESMR, and PCS, competition in the CMRS marketplace is only likely to increase.¹⁵ Moreover, Congress obviously took such findings into account before it adopted its preemption requirement. The fact that Congress adopted the provision suggests it concluded that market conditions

¹³ Page 9 of the LPSC petition references 320 complaints regarding cellular rates or service over the last year. The LPSC was unable to provide Century with copies of these complaints as stated in the attached letter from Carolyn Devitis, LPSC Senior Staff Attorney. (Exhibit 5) She latter forwarded Century some complaints for the period 1985 - 1994. There were a total of 11 complaints for 1993 and 8 complaints for 1994. See Exhibit 6 for a breakdown and description of the customer complaints filed for the period 1985 - 1994.

¹⁴ Louisiana Petition at 38-41.

¹⁵ Louisiana fails to take such alternative technologies into account in its cursory assessment of the CMRS marketplace.

- 8 -

in the CMRS industry as a whole would not result in unjust or unreasonable rates. Thus, the purpose of the petition is to demonstrate why unique circumstances in Louisiana warrant a departure from this general preemption scheme. Louisiana's petition provides no such evidence.

Further, general statements as to the benefits Louisiana's regulatory oversight affords to consumers are not sufficient to meet the heavy burden imposed by the statute. The FCC Order is explicit that specific and substantiated evidence as to why rate regulation is needed must be provided. Since no such evidence is offered by Louisiana, the Commission may not, consistent with the statutory standards, grant the Louisiana petition.

III. CONCLUSION

As detailed above, Louisiana has neither identified existing CMRS rate regulations eligible for continuation nor met the statutory standard for the grant of such authority. Accordingly, its petition must be denied.

Respectfully submitted,

CENTURY CELLUNET, INC.

By: W. Bruce Hanks
W. Bruce Hanks
President
CENTURY CELLUNET, INC.
100 Century Park Drive
Monroe, LA 71203
(318) 325-3600

September 19, 1994

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 1994, I caused copies of the foregoing "Comments of Century Cellunet, Inc." to be mailed via first-class postage prepaid mail to the following:

Paul L. Zimmering
William L. Geary, Jr.
Stephanie D. Shuler
Stone, Pigman, Walther,
Wittmann & Hutchinson
546 Carondelet Street
New Orleans, Louisiana 70130

Brian A. Eddington
General Counsel and
Assistant Secretary
Carolyn L. DeVitis
Senior Attorney
Louisiana Public Service Commission
One American Place, Suite 1630
Baton Rouge, Louisiana 70825


Barbara A. Litvak

NAME: 4114. Pat Miller
 ADDRESS: 1100 Melodie Drive
Met. La. 70002
 PHONE: (O) _____
 (H) 831-2827

DATE: 8/21/91
 PARISH: Jefferson
 TAKEN BY: eg
 TIME: 12:37
 CONTACT: _____

ACCOUNT NUMBER: _____

REMARKS: PSC don't allow lower rates for BellSouth
because of Radio phone. He is an ex SCB employee
and cannot get the low rates that's offered under
benefit plan unless PSC change rate.

He knew Comm. Behrengmann's grandfather
and worked with him closely want Comm.
Behrengmann to do likewise with him. Mr.
kept apologizing saying he is not arguing with
me told him if I don't get info today will get
it tomorrow.

left message for MW - 8/22

8/27 I spoke to T.B. Miller informed him
PSC does not have jurisdiction in any cellular
phone matters pertaining to these rates

C / B. S. L.

NAME: Charles Ramirez Inc.ADDRESS: 1704 Laurel BlvdPHONE: (O) 738-6984

(H) _____

DATE: 9-19-94

PARISH: _____

TAKEN BY: _____

TIME: _____

CONTACT: _____

ACCOUNT #: _____

REMARKS: Bill South Mobility Rates
Motor Rates pay lower rates than 30-0-0
199111.1001/31.Eddy will call me tomorrow
12-19Eddy spoke to me & explained
they could have different rates
in different cities - told them
we don't actually regulate rates -CLOSED

NAME: Mr. Bill Clayton

DATE: 9/24/91

ADDRESS: 585 Marilyn Drive

PARISH: ST. TAMMANY

Mandeville, LA 70448

TAKEN BY: EG

PHONE: (O)

TIME:

(H) 626-9151

CONTACT:

ACCOUNT NUMBER:

REMARKS: Bell South went up on his rates from \$16 month to \$35 month without informing him. I explained to Mr. Clayton that Cellular companies only have to have their rates filed with PSC not approved. He still wants us to call them. Delilah spoke to Mr. C she said he was an employee that is why his rates were lower he doesn't work for them anymore. She told him that we would call them for him.

I called and spoke to Kathy Osborn she will call Mr. Clayton.

EXHIBIT 3

EXHIBIT 4

LOUISIANA PUBLIC SERVICE COMMISSION

ORDER NO. U-20349-B

LOUISIANA PUBLIC SERVICE COMMISSION

VS.

DOCKET NO. U-20349

PRICE CELLULAR CORPORATION,
D/B/A LOUISIANA 8 CORPORATION

In re: Alleged overcharges for cellular service within the State of Louisiana.

The Commission in its Open Session held September 9, 1993, considered the dismissal of this docket along with motions registered by the parties.

The Commission instructed the Staff to dismiss this docket upon Staff's satisfaction that all necessary documents have been signed in accordance with the conditional order entered in this matter and all approvals secured.

The Staff has reviewed all documents and finds that all documents have been signed to the satisfaction of the parties.

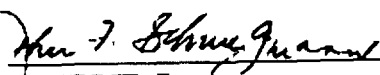
Price Cellular Corporation has entered a "Motion to Withdraw Motion for Rehearing and Motion for Stay" filed July 14, 1993, and Radiofone has submitted a "Motion to Dismiss Intervention." These Motions are sustained.

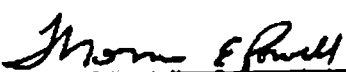
It appearing that this matter has been resolved to the satisfaction of all parties and this Commission, it is

ORDERED dismissed.

BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA
SEPTEMBER 22, 1993


DISTRICT II
CHAIRMAN KATHLEEN B. BLANCO


DISTRICT I
VICE-CHAIRMAN JOHN F. SCHWEGMANN


DISTRICT IV
COMMISSIONER THOMAS B. POWELL

SEP-19-94 MON 16:24

CENTURY CELL TXK

FAX NO. 9037920283

P.20

BOLES, BOLES & RYAN, ATT. TO

SUSAN-CTE

P.02

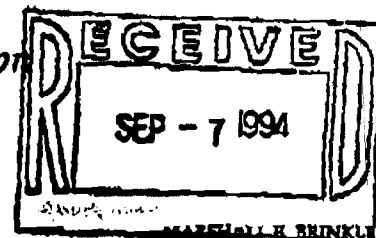


Louisiana Public Service Commission

POST OFFICE BOX 91154
BATON ROUGE, LOUISIANA 70821-9154

Telephone:

(504) 342-9808



COMMISSIONERS

Kathleen Babineaux Blanco, *Chairman*

District II

John F. Schwegmann, *Vice Chairman*

District I

Thomas Powell, *Member*

District IV

Don L. Owen, *Member*

District V

Irma Muse Dixon, *Member*

District III

Secretary

ROY F. EDWARDS

Assistant to the

Secretary

August 31, 1994

Janet S. Boles, Esq.

Boles, Boles & Ryan

7809 Jefferson Hwy., Suite D-3

Baton Rouge, Louisiana 70809

Re: Inquiry regarding cellular complaints

Dear Ms. Boles:

This letter is in response to your telephone inquiry regarding Commission receipt of cellular complaints and in particular the affidavit that appears as Exhibit 11 attached to Petition on behalf of the Louisiana Public Service Commission for Authority to Retain Existing Jurisdiction Over Commercial Mobil Radio Services Offered Within the State of Louisiana.

The facts contained in the affidavit are based on information received from staff at the Commission's main Baton Rouge office and members of the district offices of the Public Service Commission.

Complaints, as you know, may many times be efficiently resolved at the staff level. Only those instances which cannot be so resolved would normally proceed to citation and hearing. In an effort to quantify the number and types of complaints received, I surveyed employees likely to receive telephone complaints. I spoke, for example with the utility staff. These individuals do not take complaints as a major function of their job duties. Nor is there a specific complaint person. Rather, these four individuals do all of the work of the utility section and also speak on the phone with whomever calls. They do not typically make a record of complaints received or particular complaints at this stage, but rather would supply information, contact the carrier or carry out other action as called for. Formal records are normally initiated only for complaints that become docketed cases.

Each staff person was asked how many complaints he or she received in an average week. Those numbers were then added together to produce a yearly figure. Information was also solicited regarding the type of complaints received. A summary of topics cited by staff was included as part of the affidavit.

EXHIBIT 5

An Equal Opportunity Employer

Page 2

These topics included: high prices, inability to switch companies, lack of itemized billing, unsatisfactory quality of service, discrimination in rates, expensive roaming rates, lack of notice or understanding of the amount of roaming necessary for service coverage, dissatisfaction with contract terms, high cancellation fees, service problems in fringe areas, inability to get service, hidden charges, and competitors not charging the correct rates.

A limited number of complaints do generate correspondence, such as for example disputes between companies and these are available for your review. Commission bulletins, minutes and orders are also available for your review.


As regards complaints received at district offices, records were kept of most complaints at some district offices, but not necessarily all. The district complaint section of the affidavit was made up of the results of surveying employees in the district offices and copies of some specific complaints. To the extent that individual customer private information is not included in these complaints, they would be available for viewing. Original complaints would be found at district offices.

Particular problems cited from the district offices included: low quality of service, contract interpretation problems, territorial disputes, roaming charges, discrimination in the amount charged, lack of itemized bill, dislike of automatic contract renewal, high prices, number of dialing digits varying between companies, and lack of information provided regarding true price of service.

You asked which complaints related to cellular carriers and which complaints were regarding paging or radio common carriers. Of the complaint topics listed in the affidavit only one of the issues, hidden charges in the sense of, for example advertising a monthly price of, say \$6.99, but the customer finds out there is a billing charge of another \$6.00 per month, was unrelated to cellular service.

If I can be of any further assistance please do not hesitate to contact me.

Sincerely,



Carolyn L. DeVitis
Senior Staff Attorney

CLD/cbc

EXHIBIT 6**END USER COMPLAINTS****Cellular**

1985 - 2 complaints - service problem

1987 - 1 complaint - billing dispute

1988 - 1 complaint - billing dispute

1989 - 6 complaints - 3 billing dispute
1 deposit dispute
2 high rates

1990 - 5 complaints - 1 service problem
1 contract dispute
2 billing dispute
1 high rates

1991 - 3 complaints - 1 billing dispute
2 high rates

1992 - 10 complaints - 2 billing dispute
1 911
4 service problem
1 deposit dispute
1 roaming dispute

1993 - 11 complaints - 5 service problem
4 billing dispute
1 ADA charges
1 contract dispute

1994 - 8 complaints 2 high rates
1 contract dispute
1 911
1 service problem
1 service inquiry
1 billing dispute
1 deposit dispute

Paging

1993 - 2 complaints

IMTS

1991 - 2 complaints

EXHIBIT 6 - Page 2**Carrier Complaints****October 19, 1987 - March 7, 1994**

Bell South Mobility and Radiophone dispute over "corporate" or "multi-unit" rates. PSC states contract should have one identity and bill that one identity.

April 29, 1994

BMI requests LPSC to investigate Cellular One of Baton Rouge offering untariffed promotional program.

January 29, 1992

Radiophone questions Bell South Mobility's governmental tariff. Requests investigation into multiple unit tariff violations.

June 22, 1993

Bell South Mobility would not entertain allowing Radiophone subscribers to roam on their system in the Plaquemine area. Contrary to public interest, and contrary to the mandate from the Public Service Commission not to induce each other's customers to switch.

EXHIBIT 7

September 12, 1994

William F. Canton
Acting Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: Petition on Behalf of the Louisiana Public Service Commission for
Authority to Retain Existing Jurisdiction over Commercial Mobile Radio
Services Offered Within the State of Louisiana - PR File No. 94-SP5.

Dear Mr. Canton:

The following comments are offered to correct some conclusions drawn in the above referenced Petition on pages 33, 36 & 41-43 (attached). The author of the petition was not in attendance at the Wireless Committee nor Service Provider Committee meetings which were the basis of the Service Providers Committee Final Report. Additional clarification will ensure that the Federal Communications Commission better understands the intent and content of that report, a copy of which is included.

*The chosen vehicle for major change in Louisiana's telecommunications infrastructure was the state Legislature not the state PSC.

*Page 23 of the Wireless Committee Report (attached), states, "The Committee recommends that the deployment and development of the wireless communications infrastructure be left to the market demand for the service." This was a more effective and efficient method than the state PSC.

*The highlighted section of page 29 of the same report anticipates that the FCC's preemption of the state's PSC authority would become law. (The term "Commission" in this section refers to the state PSC.) The recommendations on pages 29-31 also anticipated preemption.

*Page 35 of the Petition references page 22 of the Service Providers Report and Recommendation G 2. This statement was the result of discussions regarding the development of telecommunications infrastructure in the rural areas of Louisiana through the provision of economic incentives by legislative means. Regulation was intended to protect non-competitive Universal services as listed in the "social contract" definition. The term "as an area develops..." would have been clearer in its intent had it read "as a geographic area develops...".

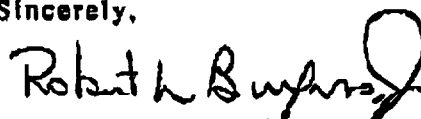
*Page 42 of the Petition states that the Wireless Committee recommended that Louisiana's lawmakers/regulators "Manage the transition...". Once again,

as the above points explained, the Wireless Committee believed the agent for real change was the state Legislature, given the anticipated preemption of state authority over wireless services. The state PSC's focus was to be the protection of Universal services.

*The Service Providers Committee does not concur with the conclusion drawn on the bottom of page 42 and top of page 43 of the Petition that states regulation of CMRS is needed. Quite the contrary, the Committee believes, that preemption of state authority over CMRS will take place. To insure rapid deployment and development of communications infrastructure the PSC should focus on protection of Universal service while the state Legislature acts as the catalyst for change.

We hope that the above information makes the intent and content of the Service Providers Committee Final Report clearer and corrects the conclusions drawn from it by the Louisiana State Public Service Commission in the referenced Petition before the FCC. Should further discussion be required, please contact either of us at the below listed numbers.

Sincerely,



Robert L. Burgess, Jr.
Chairman, Wireless Committee